

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1231/MUM/2024
(Assessment Year: 2020-21)**

Ajinkyatara Sahakari Patsanstha Maryadit

SS 3/319 Sector No. 6, Kopar Khariane

Navi Mumbai, Maharashtra

Mumbai – 400709.

[PAN: AACAA9183F]

..... **Appellant**

Vs

Income Tax Officer, Ward 28(1)(1)

Vashi Income Tax Office Navi Mumbai,

Navi Mumbai, Maharashtra 400703

..... **Respondent**

Appearance

For the Appellant/Assessee

: Shri Sushant N. Alme

For the Respondent/Department

: Shri Himanshu Sharma

Date

Conclusion of hearing

: 03.07.2024

Pronouncement of order

: 24.09.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 07/02/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2020-2021, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 26/09/2022, passed under Section 143(3) read with Section 144 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'].

2. The appellant has raised following grounds of appeal :

"1. *On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals), National*

Faceless Appeal Centre (NFAC) was not justified in sustaining the additions made by the Assessing Officer by disallowing the bonafide claim of deduction a/s 80P(2)(a)(il) of the Income Tax Act, 1961 in respect of income attributable to providing credit facilities to the members.

2. *On the facts and in the circumstances of the case and in law the Ld. Assessing Officer and Ld. Commissioner of Income Tax (Appeals). National Faceless Appeal Centre (NFAC) has wrongly relied on the Hon'ble Apex Court decision in the case of Totgars Co-operative Sale Society Ltd. vs. Income Tax Officer, Karnataka (2010) 188 Taxman 282 (SC) while disallowing the claim of deduction u/s 80P(2)(a)(i) of the Act. The said decision is with regard to interest on fixed deposits made out of surplus funds however, in Appellant's case, the Assessing Officer has disallowed the claim of deduction in respect of income received by providing credit facilities to the members.*
 3. *On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has failed to consider the bonafide submission made by the Appellant Society and summarily rejected the appeal without condoning the delay in filing the appeal.*
 4. *On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has failed to consider the recent judgment of Hon'ble Supreme Court in case of PCIT vs ANNASAHEB PATIL MATHADI KAMGAR SAHAKARI PATHPEDHI LIMITED (CIVIL NO.8719/2022, wherein it has been held that the entire income of the Co-operative Credit Societies attributable to providing credit facilities to the members is fully deductible u/s 80P(2)(a) of the Act and therefore the order of the Ld. Commissioner of Income Tax (Appeals) is bad in law."*
3. The relevant facts in brief are that the Assessee/Appellant is a Co-operative Credit Society registered under Maharashtra Cooperative Societies Act, 1960 and engaged in providing credit facilities to its members. It is stated that the Appellant does not undertake any business with a person other than its own members. In the return of income for the Assessment Year 2020-2021, filed on 28/11/2020, the Appellant declared income of INR.2,71,810/- after claiming deduction of INR.26,14,333/- under Section 80P of the Act in respect of income derived from

providing credit facilities to its members and interest/dividend received from co-operative banks. However, the while framing assessment vide Assessment Order, dated 26/09/2022, passed under Section 143(3) read with Section 144 of the Act, the Assessing Officer denied deduction claimed by the Appellant under Section 80P of the Act.

4. Being aggrieved the Appellant preferred appeal before the CIT(A) against the above Assessment Order. Since the appeal was filed after a delay of 131 days, the Appellant filed application seeking condonation of delay before CIT(A) which was accompanied by the affidavit explaining the reasons for the delay. The CIT(A), not being convinced, declined to condone delay in filing appeal and dismissed the appeal as being barred by limitation vide order, dated 07/02/2024.
5. Being aggrieved, the Appellant has preferred present appeal before the Tribunal on the grounds reproduced in paragraph number 2 above.
6. We have heard rival submissions and perused the material on record.
7. We note that the CIT(A) had dismissed the Appeal as being barred by limitation holding that there was inordinate delay in the institution of appeal without any genuine or sufficient reason. During the course of hearing the Learned Authorised Representative had relied upon paragraph 3.2 and 3.3 of the order passed by the CIT(A) wherein the relevant extract of the affidavit filed along with the application seeking condonation of delay was reproduced in the following manner:

"3.2. The appellant has, in Form 35, mentioned the following grounds for condonation of delay which is reproduced below.

"Respected sir Due to ill health of one of the promoter and director of society there is delay in filing of appeal. Affidavit for the same attached."

3.3. *Apart from the above reason for condonation of delay in filing of appeal, the appellant has also filed an affidavit dated 23.02.2023 sworn by one Mr. Sandeep Baban Wadkar in the capacity of Manager of the co-operative society. In the said affidavit the following reason has been given for delay in institution of appeal*

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"We are vernacular educated and having limited knowledge of Income tax provisions. We were not aware legal intricacies of the matter and income tax proceedings and subsequently followed by the Assessment order passed by the Assessment Unit, Income tax department.

I further state that due to ill health of the Promoter and Managing director of the Society there is delay in filing the Income tax Appeal.

I further state and declare that when we realized the default on part of the Society to comply the tax obligation, we initiated steps required under income tax proceedings. Accordingly, we have filed appeal before The National Faceless Appeal Centre (NFAC) on 09/03/2023 which is delayed by 131."

8. The above explanation furnished by the Appellant was rejected by the CIT(A) on account of two grounds. Firstly, the CIT(A) observed that ill-health of one of the promoter/director could not be accepted as the sole reason for delay in filing the Appeal. Secondly, it was observed by the CIT(A) that the Appellant had preferred Appeal for the Assessment Year 2017-18 by filing the Appeal on 21/01/2020 against the Assessment Order, dated 24/12/2019. Therefore lack of education or having limited knowledge of income tax provisions could not be accepted as a valid reason for delay in filing the appeal.
9. On perusal of record we find that in the present case the

Assessment Order was passed by the Assessing Officer on 26/09/2022. It is the case of the Appellant that at the relevant time, the promoter and managing director of the society was having health issues which resulted in delay in filing appeal before the CIT(A). In our view, the fact that appeal for the Assessment Year 2017-18, instituted on 21/01/2020, was filed within limitation cannot be basis of rejecting the explanation offered by the Appellant for delay in filing the appeal for the Assessment Year 2020-2021. We note that it has not been disputed by the CIT(A) that the person in-charge was not keeping good health or that such person was educated in vernacular and had limited knowledge of income tax laws. In the case of **Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC)**, the Hon'ble Supreme Court has emphasized that substantial justice should prevail over technical considerations and held that the requirement that every day's delay must be explained does not mean that a pedantic approach should be taken. According to the Hon'ble Supreme Court the aforesaid doctrine must be applied in a rational common sense and in pragmatic manner, and more so in circumstances where a litigant does not stand to benefit by lodging the appeal late. In the present case we are of the view that the Appellant had explained the reason for delay in filing appeal before the CIT(A). Further, in the present case also the Appellant was not set to gain by delaying the filing of appeal before the CIT(A). In view of the explanation provided by the Appellant, the delay of 131 days in filing the appeal before CIT(A) deserved to be condoned. In any case, in our view, the Ld. CIT(A) was not justified in rejecting the application for condonation of delay without first confronting the Appellant. Therefore, the order passed by the CIT(A) dismissing the appeal as being barred by limitation is set aside. We further note that the issue raised in the present appeal, on merits, stands decided in favour of the Assessee by

the judgment of the Hon'ble Supreme Court in the case of **Mavilayi Service Co-operative Bank Ltd. vs. Commissioner of Income Tax, Calicut: [2021] 431 ITR 1 (SC)[12-01-2021]**, wherein it was held that the provision of Section 80P(4) of the Act are attracted only in case of co-operative society holding a banking license issued by the Reserve Bank of India (RBI). It is not the case of the Revenue that the Assessee is either registered with RBI under Banking Regulation Act, 1949 and/or holds banking license issued by RBI. Therefore, provisions of Section 80P(4) of the Act would not get attracted in the present case and the Appellant would be eligible to claim deduction under Section 80P of the Act. Identical view has been taken by the Hon'ble Supreme Court in case of **The Pr. Commissioner of Income Tax-17, Mumbai Vs, M/s Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Maryadit** [*Civil Appeal No. 8719/2022: dated 20/04/2023*]. Thus, as regards profits and gains earned by the Appellant from the business of provide credit facility to its members, the Appellant would be entitled to deduction under section 80P2(a)(i) of the Act. Whereas in respect of interest received from Co-operative Bank, the Appellant would be entitled to deduction under Section 80P2(d) of the Act since a co-operative bank continues to be a co-operative society as held in the case of NPC Employees Cooperative Credit Society Limited Vs. ITO Ward 27(2)(1) [ITA No. 89/Mum/2024, dated 27/06/2024] cited in behalf of the Appellant during the course of hearing. We note identical view has been taken by the Mumbai Bench of the Tribunal in the case of Reserve Bank Staff and Officers Co-operative Credit Society Ltd. by the Hon'ble ITAT 'D' Bench Mumbai, vide order dated 22/01/2024 passed in ITA No.3114 to 3118/Mum/2023. In our view, remanding the issue back to the file of the CIT(A) for adjudication on merits would amount to empty formality. Therefore, respectfully following the aforesaid

judgments of the Hon'ble Supreme Court and decisions of the Tribunal, we delete the disallowance made by the Assessing Officer and direct the Assessing Officer to grant deduction under Section 80P(2)(a)/80P(2)(d) of the Act as claimed by the Appellant. In terms of the aforesaid, all the grounds raise by the Appellant are allowed.

10. In result, the present appeal is allowed.

Order pronounced on 24.09.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.09.2024
Y.S.Patil, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai